

Eastbay pair selected for U.S. court positions

By Gayle Montgomery
Tribune Political Writer

Oakland Municipal Court Judge Marilyn Patel and Berkeley attorney Thelton Henderson were nominated Thursday as judges in the northern division of U.S. District Court by Sen. Alan Cranston.

Patel, a highly ranked member of the municipal bench, was named to the vacancy created by the elevation of federal Judge Lloyd H. Burke to senior status.

Henderson, a member of the San Francisco law firm of Rosen, Remcho and Henderson, is former dean of admissions of the Stanford Law School.

Both were recommended by the Judicial Selection Commission, which is made up of nine members appointed by Cranston, Sen. S.I. Hayakawa and the California Bar Association.

The nominations are subject to approval by the Justice Department, the U.S. Senate and the White House, but a Cranston aide said no problems are expected.

When told of the senator's announcement Thursday, Patel said,

"It's a little numbing right now. It is very exciting, but an awesome responsibility."

Henderson could not be reached for comment, but a spokesman for his firm said he had been told by the senator of the appointment.

Patel, who was known for her progressive attitude on the municipal bench, said she will miss the lower court.

"I like it here. I will even miss the defendants. I don't mean those that commit violent crimes, but those with problems like alcoholism and mental health—those who should not be before a court, but in a hospital. I'd like to think I helped them a little."

WORLD

U.S. judges detained, questioned in South Africa

By Allister Sparks
Washington Post

AUG 20 1982

JOHANNESBURG, South Africa — Three black American jurists visiting South Africa, including U.S. District Court Judge Thelton Henderson of San Francisco, were detained and interrogated for two hours by security police in the tribal homeland of Ciskei, the visitors said.

The three were among five American jurists invited here by a South African black lawyers' association. The five said Thursday that they were also tailed by men they believed to be members of the security police throughout a two-day visit to Cape Town and questioned at a roadblock when they visited a pass-law court there.

Henderson said at Johannesburg Airport Thursday night before flying home that he found the experiences distressing but felt that they had helped him understand better what it is like to be a black South African.

"It is considerably different from being a black American," he said.

The encounter with the Ciskei security police took place Aug. 11, the Americans said. The chief of the homeland's security police, Maj. Gen. Charles Sebe, flatly denied Thursday that it ever occurred.

Questioned about the incident after the American group had described it to South African newspapers and to the U.S. Embassy in Pretoria, Sebe said: "This never happened. It is a bunch of lies."

Sebe is a brother of President

Lennox Sebe of the homeland, one of several areas reserved for blacks that South Africa has granted nominal independence.

Henderson said he, civil rights lawyer Julius Chambers, of Charlotte, N.C., and Vivian Chambers wanted to visit a courthouse in the town of Zwelitsha, where a group of young blacks was appearing in a security trial.

When they arrived, two plainclothesmen ordered them to go to the headquarters of the Ciskei Central Intelligence Services.

A lieutenant colonel and a full colonel of the intelligence service questioned them, the Americans said.

"They told us they had information we were spies," Henderson said. "They went on and on about the dan-

gers of communism and how the Communists use other people as spies without them being aware they are being used."

They were released after about two hours.

The judge also described how the group was tailed for two days by two white men, whom they took to be security policeman, during a visit to Cape Town.

When the group — which also included a circuit judge of the U.S. Court of Appeals, Leon Higginbotham Jr., of Philadelphia — visited a court in an African township where blacks are tried under the pass laws that control their movements about the country, they were pulled aside for questioning at a roadblock, members of the group said.

South Africa gives judge firsthand taste of apartheid

By Gerald Davis
Tribune Staff Writer

BERKELEY — U.S. District Judge Thelton Henderson went to South Africa earlier this month for "insights" and says he came away with a harrowing experience that left him resolving to work against the misery that is reality for black South Africans living under apartheid.

While looking in on a trial of teen-agers accused of violating security laws, officers in the South African tribal homeland of Ciskei detained and interrogated Henderson as a suspected communist spy, the San Francisco judge said from his Berkeley home Friday.

Henderson said he was released after about two hours of questioning and intimidation without any further explanation for being held. He said much of the ordeal involved lectures by the security officers on the dangers of being a communist spy.

The security police chief has denied that the incident occurred.

Henderson was part of a four-member group invited by a black lawyers association in South Af-



Judge Thelton Henderson
Ugly time in South Africa

rica for a firsthand view of conditions there. The black lawyers group also sought advice on legal strategies to combat apartheid.

Henderson said the interrogators and security police he faced were all black. They are part of the system the South African government has established to

maintain separate living conditions between the country's various racial groups.

Although he was never physically injured, his detention "was fairly terrifying," Henderson said.

"They said communists were treacherous people who use people without them knowing it. There were a lot of implied threats.

"They said 'those who allow themselves to be used end up in trouble. We know how to give out trouble.'

"When we first went in, I didn't think it meant much. I'd tell them I was Judge Henderson, an American federal judge, and then I'd leave.

"When we were there for an hour-and-a-half, I knew this was for real. I thought, 'Hey, they don't believe me.' It was a whole new ballgame I didn't know how to play.

"With guys standing outside the window with submachine guns, it started looking pretty grim."

At that point, he said, he began

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thinking the authorities would try to use him for some political advantage, possibly to pressure for U.S. recognition of Ciskei, a designated black "homeland" where blacks are allowed local control under the auspices of white South African government.

By law, every inch of South Africa's land is designated individually as residence areas for the various ethnic groups. Whites, who make up about 17 percent of the population, claim for themselves 86 percent of the land.

Blacks, composing 71 percent of the population, are allocated only 14 percent. This 14 percent is made up of scattered parcels. The government has changed the official designation from homeland to native reserves — Bantustans — and most recently, independent national states.

The latter designation has been

rejected by the United Nations as well as the United States. It is considered a ploy by the South African government to avoid criticism for not granting political rights to black people by saying they technically are not South African citizens.

During the past 33 years, the South African government has uprooted an estimated two to three million black people and placed them in the reserves.

Henderson said establishment of local black authorities is "a political device to get blacks out of the cities and into the bush, the worst parts of the country.

"They set them up with a little budget, and (the blacks) give up the vote."

Henderson said those detained with him were Julius Chambers, president of the NAACP Legal Defense Fund, Chambers' wife Vivian, and Judge Leo Higgenbotham of the Third Circuit Court

of Appeal in Philadelphia.

He said they saw the effects of legal wage and housing discrimination that places blacks behind Asians, mixed-race people and whites. They saw blacks forcibly separated by tribe.

They saw that when the government wanted land that blacks were living on, "they took some people and dumped them in an arid area where there was no water, nothing.

"They were sleeping under trees. They had to drink from a polluted river.

"It's one thing to read about it and be aware," Henderson said. "It's another to meet a person and see it."

The graphic, firsthand experience has stirred the group's emotions, said Henderson.

"The four of us who went have committed ourselves to do things to help."

Judge reluctantly reverses convictions

The Associated Press

FRI JAN 1 1988

SAN FRANCISCO — The convictions of Oakland drug lord Felix Mitchell were reversed yesterday by a federal judge because Mitchell was killed in prison before his appeal could be heard.

U.S. District Judge Thelton Henderson followed the orders of the 9th U.S. Circuit Court of Appeals, which cited its 1983 ruling that a conviction could not stand unless the defendant had been allowed an appeal

hearing.

Henderson was assigned the case after the judge who presided over Mitchell's U.S. District Court trial, Marilyn Hall Patel, refused to dismiss the charges, saying the order "conflicts with my moral and ethical conscience."

Mitchell, 32, was convicted in 1985 along with five other members of the "69 Mob" gang that sold heroin in East Oakland housing projects. Prosecutors said the gang made as much as

\$400,000 a month between 1976 and 1983.

Under a federal law aimed at leaders of drug operations, Mitchell was sentenced to life in prison without the possibility of parole.

He was stabbed to death in August 1986 in a federal prison in Leavenworth, Kan. A week later, his coffin was borne through Oakland in a horse-drawn carriage followed by limousines, in a lavish funeral procession that made national headlines.

The convictions of Mitchell's co-defendants were upheld by the appeals court last June.

Mitchell's pending appeal, which was never heard, made one argument that did not apply to the other defendants: a claim that the constitutional ban on double jeopardy was violated when he was convicted both of drug conspiracy and operation of a continuing criminal enterprise, the charge carrying a life-without-parole sentence.

At a hearing in August, Patel

s of dead drug lord

asked that the case be assigned to another judge. "I cannot restore Mr. Mitchell's good name after what I have heard in this trial," she said.

Henderson, who like Patel is from the Eastbay, expressed some reservations in his ruling.

He noted that under 9th Circuit precedent, the dismissal of charges blocks the government from using the criminal conviction to seize Mitchell's \$400,000 house in the Los Angeles suburb of Northridge. Authorities have

begun the more cumbersome process of a civil court suit to claim the house, allegedly bought with drug proceeds, as well as cars, jewelry and other property.

But Henderson said he "respectfully recommends reconsideration" by the 9th Circuit of at least the portion of its ruling blocking forfeiture of the house as part of the criminal case.

"The symbolic impact of what

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the community perceives as clearing Mitchell's name and legitimating his monetary legacy is a legitimate matter to be considered," Henderson said.

He said the 9th Circuit ruling barring criminal forfeitures because of a defendant's death involved a case in which the defendant had died a few hours af-

ter sentencing, and the merits of his possible appeal were unknown.

By contrast, Henderson said, the apparently overwhelming evidence against Mitchell, and the rejection of his co-defendants' appeals, showed "the improbability of reversal of Mitchell's conviction" if his appeal had been heard.

Pioneering judge moves up again

WED OCT 3 1990

The Associated Press

SAN FRANCISCO — U.S. District Judge Thelton Henderson soon to become the first black chief federal judge in California, has been a pioneer before.

After graduating from the University of California at Berkeley law school in 1962, Henderson became the first black attorney in the Justice Department's Civil Rights Division, and soon found himself facing a gun-wielding policeman in the South who arrested him for a traffic violation.

He went through much the same experience in 1984, four years after being named to the bench, when he and other black leaders visiting South Africa were arrested and detained for nearly a day. Henderson told an interviewer that they were watching the trial of black children when officers ordered them

to the police station, where they were questioned in a windowless room.

Henderson, now 56, is scheduled to become chief judge of the Northern District of California in November, when William Ingram, who has held the post for two years, transfers to semiretired senior status. A senior judge normally carries a reduced caseload, but Ingram plans to keep all his current cases, and Henderson says he may do so too despite his new administrative duties.

"I know our court is really hurting and I feel an obligation to keep the cases I already have," Henderson said yesterday, referring to the court's longstanding vacancies and heavy caseload.

He said he did not know how long he would remain chief judge, but doubted it would be as

long as seven years, the maximum allowed.

Henderson ran a poverty law clinic in East Palo Alto, directed a minority admissions program at Stanford University and practiced law in San Francisco, with an emphasis on civil rights cases, before being appointed to the bench by President Jimmy Carter.

His most prominent rulings have included overturning the murder conviction of former Black Panther Johnny Spain in a 1971 San Quentin uprising because Spain was painfully shackled during his trial; allowing small booksellers to challenge discounts to big chains; upholding a San Francisco minority contracting ordinance, and recently ordering an embargo on foreign-caught tuna because of excessive killing of dolphins.



Thelton Henderson
Soon will be chief judge

Eastbay Ear



Martin Snapp THU OCT 4 1990

Driving Ambition: Did you read yesterday's story about Thelton Henderson the new chief judge of the federal district of Northern California? I got a call from another judge, who said, "You guys left out all the good parts! First of all, he's from Berkeley. But second, there's a great story from when Thelton was the first black lawyer in the Justice Department's civil rights division. You should call him and get him to tell it to you."

So I did. And here it is:

"In 1963 I was working in Birmingham, Alabama, on voting rights cases," said Henderson. "In those days, the only place where blacks were allowed was the A.G. Gaston Motel. Everybody stayed there, including Dr. King. One day I ran into him in the parking lot. He said, 'We're going up to Selma to do some organizing, but somebody slashed a tire on my car. Can I use your car?' He was a fairly persuasive guy, so I said yes."

"We were pretty naive in those days. It turned out we were both being followed. They checked out the license plate and struck gold with me."

"Now, I was just a lowly entrance-level attorney, fresh out of Boalt Hall. But the next day all the southern papers ran big stories about how a 'high-ranking official in the Justice Department' was 'chauffering' Dr. King around. They used it to 'prove' that the Kennedys were helping the civil rights movement, as if that were a bad thing."

"Finally, the state authorities issued a warrant for my arrest, and the grand jury was all set to come to Washington and question me. But the hearing never took place. It was scheduled for Nov. 22, 1963. They were only using me to get to Kennedy, anyway. Once he was gone, they dropped it."

"A month later, Dr. King was named Time's 'Man of the Year.' A few months after that, he came out here to California to make a speech, and I picked him up at the airport. And he said to me, 'If I'm Man of the Year, that makes you Chauffeur of the Year.'"

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Incidentally, if you've seen the movie "True Believer," you've seen Henderson. He plays — what else? — a judge in the first scene. (His friends refer to him as "Hollywood" Henderson.) . . . What are AC Transit's official colors? Red and green, right? Wrong. The true colors are "Persimmon" and "Tahoe Green." This information comes to us from an AC Transit press release, which also informs us that AC Transit observed its 30th birthday on Monday.

And how did AC Transit celebrate? It raised the fares to \$1.

A BART director's letter to a judge — backing a lighter sentence for a former BART employee convicted of misusing district funds — drew fire yesterday from fellow board members.

BART board President Erlene DeMarcus, who said she learned of the letter from "furious" FBI agents, yesterday sent her own letter clarifying that BART Director Michael Bernick was speaking for himself and not the rest of the board.

"It was improper," DeMarcus said. "It was very irresponsible. I just think he made a mistake."

Bernick, an attorney who represents San Francisco on the BART board, defended his Nov. 11 letter to U.S. District Court Judge Thelton E. Henderson about former BART maintenance manager Helder Simas.

Simas was one of three former BART employees caught in a three-year FBI sting operation.

A federal jury in 1989 convicted Simas of accepting a \$2,000 bribe from an undercover FBI agent and using BART funds to buy \$2,000 worth of goods from another undercover agent.

Henderson sentenced Simas to two years in prison and fined him \$42,000. Appeals that have since failed stayed imposition of the sentence.

Simas' attorney Ephraim Margolin asked Henderson to reduce the sentence to allow him to serve the term in a half-way house, which would allow him to continue working for a new employer who promised to fully pay the fines and restitution to BART.

Simas is due before Henderson Dec. 2.

Bernick said Margolin, whom he has known since law school, asked him to write the letter.

"In my view there has not been sufficient attention paid by the FBI to the unreimbursed losses suffered by BART as a result of law enforcement activities, which came very close to entrapment and consequently resulted in losses to BART which might have been avoided," Bernick wrote.

The new sentence was "an eminently sensible outcome," wrote Bernick, who also noted he is the board's vice president.

In an interview, Bernick said the letter "makes it very, very clear that it is my view."

"Since it is a non-violent crime, it made sense to have him continue in his job," Bernick said. Simas would still serve a sentence and "the taxpayers can get paid back," Bernick said.

DeMarcus, however, said she was "shocked" to learn of the letter Tuesday when "furious" FBI agents called her asking if the

letter represented the board's view.

Bernick violated the board's "clear policies" by using BART's letterhead instead of his own stationery, DeMarcus said.

Director John Glenn made the letter public during a board discussion on the flow of information between directors. The revelation then reopened the ongoing heated feud between Glenn and Director Nello Bianco, with Bernick charging it was all tied to a board power play.

However, Assistant U.S. Attorney Ben Burch later said he also questioned whether the letter represented the entire board.

FBI spokeswoman Barbara Madden said she did not want to characterize her agency's reaction.

"We certainly hoping the board didn't feel that way," Madden said. "He's entitled to his opinion and he's entitled to write a letter."

However, "Mr. Simas wasn't entrapped. Obviously, the jury didn't feel that way," Madden said. And she said the investigation did not cause BART financial losses.

Tribune writer Michael Collier contributed to this report.

SUN JUL 12 1992

THELTON HENDERSON 49,

Chief Judge, U.S. District Court, San Francisco: About 1982, when I was first appointed (a federal judge), and I was married to a woman who is white, I was stopped by the police on Grand Avenue (in Oakland) and I was absolutely sure I was stopped only because she and I were in the car together.

The police officer actually called for a back-up car, as if I were a threat. Billy Hunter, who was then the U.S. Attorney, happened to be across the street, and when he saw what was occurring, he came over and began saying to the officers, "What's happening to the judge?" It was only then that the officer let me go.

INJURED BEAR GRIDDER IS HAPPY AS A WATER BOY

By ED SCHOENFELD

From halfback to water boy—that's Thelton Henderson's story at Cal this fall.

It's a story of an outstanding high school and freshman player who, when informed by doctors he couldn't play any more football for a while, decided to stick by the Bears as a water boy.

Instead of being downhearted, as one might expect, he's one of the gayest fellows on the field. He whistles while he works—although he packs a water bucket, not a football.

U.C. doctors refused Henderson permission to play when they found the knee he injured in the Santa Clara game last year hasn't healed properly.

Playing safety for the varsity against Santa Clara, Thelton was returning a punt when he was tackled and injured his knee. The knee was operated on but has been slow healing.

"There are a couple of reasons why I'm getting a bang out of being a water boy," explained Henderson. "It gives me a chance to remain with my football buddies. I room with one of the halfbacks, Jerry Drew. And I hope to play again next year, so it gives me a splendid opportunity to keep an eye on anything new the coaches might put in this season."

Henderson came to U.C. in the fall of 1951 after starring on the Jefferson High eleven that won the Los Angeles Milk Bowl game. He played first-string halfback at Jefferson High for two seasons.

Although he weighed only 160 pounds, Thelton won a place in the starting backfield at left half with the Frosh Ramblers at Cal in 1951.

Coach Pappy Waldorf was figuring on Henderson to be one of his leading reserve halfbacks last year until he got hurt. This was expected to be the year he would have made a bid for a starting backfield spot.

The young man hopes he will be able to return to athletic competition next spring as a shortstop on Clint Evans' baseball team. He played three seasons at shortstop in high school.

Henderson is a political science major who stands high in his class with a remarkable 2.2 point average. He plans to enter Cal's Boalt Law School upon his graduation.

But first Thelton hopes to trade the water bucket in for a football and become a Cal football star.